APPENDIX A

FORMER FIFTH

SUMMER v. LAND & LEISURE, INC.

ROGER L. SUMMER,
Plaintiff-Appellant

v.

LAND & LEISURE, INC., et al.,
Defendants-Appellees

Nos. 79-2429, 80-5297

United States Court of Appeals,

Fifth Circuit.*

Unit B

ROGER L. SUMMER,
Plaintiff-Appellant
Cross-Appellee

v.

LAND & LEISURE, INC., et al.,
Defendants-Appellees
Cross-Appellants.

Dec. 28, 1981

Investor brought action against corporation, lead underwriters, and accounting firm alleging violations of federal securities laws and alleging several state law claims. The United States District Court for the Southern District of Florida, Jose A. Gonzales, Jr., J., granted defendants' motion to dismiss for failure to state a claim upon which relief could be granted, and plaintiff appealed. The Court of Appeals, R. Lanier Anderson, III, Circuit Judge, held that: (1) plaintiff's claims under sections 11 and 12(2) of the Securities Act of 1933 were absolutely barred since normal tolling rules were not applicable to toll the Act's applicable three-year period of limitations; (2) plaintiff alleged sufficient

*Former Fifth Circuit case, Section 9(1) of Public Law 96-452 — October 14, 1980.

facts which would toll statute of limitations on his claims under section 10(b) of the Securities Exchange Act of 1934 and under section 17 of the Securities Act of 1933; and (3) conclusory allegations of fraudulent concealment as against underwriters and accounting firm did not satisfy federal rule requiring elements of fraud to be pleaded with particularity, but plaintiff was granted leave to amend to assert more particularized allegations.

Affirmed in part, reversed in part and remanded.

1. Limitation of Actions — 100(6)

Normal tolling rules are not applicable to toll three-year period of limitations for action brought under applicable provisions of the Securities Act of 1933. Securities Act of 1933, § 13, 15 U.S.C.A. § 77m.

2. Securities Regulation — 133

Investor's claims under sections 11 and 12(2) of the Securities Act of 1933 were absolutely barred under three-year period of limitations contained within the Act. Securities Act of 1933, §§ 11, 12(2), 13, 15 U.S.C.A. §§ 77k, 77l(2), 77m.

3. Federal Civil Procedure — 1754

Investor, who brought action against corporation under section 17 of the Securities Act of 1933 and under section 10(b) of the Securities Exchange Act of 1934 and who alleged that by exercise of due diligence he did not discover those claims until within one year before the complaint was filed, which was well within appropriate statute of limitations under Florida law, alleged sufficient facts which would toll the statute of limitations on those claims and thus district court erred in dismissing investor's complaint for failing to state a cause of action. Fed. Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A.; Securities Act of 1933, § 17, 15 U.S.C.A. § 77q; Securities Exchange Act of 1934, § 10(b), 15 U.S.C.A. § 78j(b).

4. Federal Civil Procedure — 839, 1811

Investor's complaint against underwriters and accounting firm which included only conclusory allegations of fraudulent concealment was properly dismissed for failing to set

forth elements of fraud with particularity, but investor was granted leave to amend to assert more particularized allegations. Fed. Rules Civ. Proc. Rule 9(b), 28 U.S.C.A.

Appeals from the United States District Court for the Southern District of Florida.

Before GODBOLD, Chief Judge, FRANK M. JOHNSON, Jr. and ANDERSON, Circuit Judges.

R. LANIER ANDERSON, III, Circuit Judge:

On February 23, 1978, appellant Roger L. Summer (referred to as "Summer" or "plaintiff" or "appellant") filed this complaint in the United States District Court for the Southern District of Florida. Subject matter jurisdiction was predicated on alleged violations of the federal securities laws; however, several state law claims were also asserted under the district court's pendent jurisdication. Summer was an investor in Land & Leisure, Inc. ("L&L"). Between June 24, 1971, and January 3, 1973, he purchased, in eleven installments, a total of 9,500 shares of L&L common stock at a total cost of approximately $54,000. L&L stock did not fare well over the years. In his complaint, Summer alleges a conspiracy or scheme among the several defendants to defraud investors and to conceal the fraud. Count 1 of the complaint alleges a claim under § 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C.A. § 78j(b), and Rule 10(b)-5 of the Securities and Exchange Commission; Counts II and VI allege claims of common law fraud; Counts III, IV and V allege claims under §§ 11, 12(2), and 17 of the Securities Act of 1933, 15 U.S.C.A. §§ 77k, 77l(2) and 77q; Count VII alleges a claim under the Florida Blue Sky Law, Fla. Stat. §§ 517.21 and 517.301; Count VIII is a state claim of mismanagement and breach of fiduciary duties by corporate officers and directors; and Count IX is a state law claim for breach of the corporate opportunity doctrine. Defendants are Land & Leisure, Inc.; and Guy B. Bailey, Guy B. Bailey, Jr., Areca Stone Bailey, Charlotte Babcock, Robert Little, Jerome Grossman, and Robert Fischer, who were at one time or an-

other officers or directors or both of L&L; and Raymond, James & Associates, Inc. ("Raymond"), the lead underwriter for L&L; and the accounting firm of Arthur Young & Co. which prepared the registration statement and prospectus for L&L. We sometimes refer to all defendants collectively as "defendants." We sometimes refer to all defendants except Arthur Young and Raymond as the "corporate defendants," *i.e.* the corporation, Land and Leisure, Inc., and its several officers or directors. Defendants moved to dismiss the complaint for failure to state a claim upon which relief could be granted. Fed. R. Civ. P. 12(b)(6). The district court granted the motion as to all the claims under federal law on the ground that they were barred on their face by the applicable statutes of limitations and, as there were no pending federal questions, exercised its discretion to dismiss the claims under state law. Furthermore, the district court determined that the complaint was frivolous and awarded attorney's fees and costs in favor of the defendants, except Little, in the aggregate amount of $32,480. *See* § 11(e) of the Securities Act of 1933, 15 U.S.C.A. § 77k(e).

I. APPLICABLE STATUTES OF LIMITATIONS FOR CLAIMS UNDER THE FEDERAL SECURITIES LAWS.

Our first task is to determine the applicable statutes of limitations for the federal securities claims. We note that more than seven years elapsed between the first purchase of stock and the filing of the complaint, and more than five years passed from the last purchase of stock and the filing of the complaint.

A. The Section 10(b) Claims.

Since § 10(b) of the 1934 Act, 15 U.S.C.A. § 78j(b), provides no statute of limitations, we look to the most analogous state statute of limitations. Under Florida law, Fla. Stat. § 517.21, provides for a two-year statute of limitations on actions for violation of Florida securities laws. *See Nortek, Inc. v. Alexander Grant & Co.*, 532 F.2d 1013 (5th Cir.),

rehearing denied, 536 F.2d 624 (1976). Section 517.21 was repealed on July 1, 1976, by Chapter 76-168, § 3 of the Laws of Florida of 1976. *See Vigman v. Community National Bank & Trust Co.*, 635 F.2d 455, 460 n.10 (5th Cir. 1981). Fla. Stat. § 95.11(5)(d) (amended 1975) provides for a three-year statute of limitations on actions for fraud. *See Vigman v. Community National Bank & Trust Co., supra.* We note that § 95.11(5)(d) was changed from three to four years on January 1, 1975. *See Vigman v. Community National Bank & Trust Co.*, 635 F.2d at 460 n.11. The district court applied the four-year statute. Since the last sale was on January 3, 1973, and since the complaint was filed on February 23, 1978, which is more than four years, the district court concluded that plaintiff's § 10(b) and Rule 10(b)-5 claims were barred. We need not decide which of the foregoing statutes of limitations apply in this case. Even assuming that the longest, the four-year statute, applies, it is clear that plaintiff's § 10(b) and Rule 10(b)-5 claims are barred, in the absence of circumstances which would toll the statutes.

B. The Section 17 Claims.

With respect to the claims under § 17 of the 1933 Act (a portion of Count III), the appropriate state statute of limitation also governs. *See Aldrich v. McCulloch Properties, Inc.*, 627 F.2d 1036 (10th Cir. 1980); *Newman v. Prior*, 518 F.2d 97 (4th Cir. 1975). The district court correctly applied to the § 17 claims the same analysis as for the § 10(b) and Rule 10(b)-5 claims. *See Nortek, Inc. v. Alexander Grant & Co., supra; Turner v. Lundquist*, 377 F.2d 44 (9th Cir. 1967). Accordingly, the § 17 claims are also barred, unless the period was tolled.

C. The Section 11 and Section 12(2) Claims.

[1, 2] Sections 11 and 12(2) of the 1933 Act, 15 U.S.C.A. §§ 77k and 77l(2) (a portion of Count III, Count IV and Count V), however, are governed by the limitation period contained in § 13 of the 1933 Act, 15 U.S.C.A. § 77m, which provides:

> No action shall be maintained to enforce any liability created under § 77k or § 77l(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, ... In no event shall any such action be brought to enforce a liability created under § 77k ... of this title more than three years after the security was bona fide offered to the public, or under § 77l(2) of this title more than three years after the sale.

The district court held that the passage of more than three years between the alleged wrongful act and the commencing of this action is an absolute bar to the claims under §§ 11 and 12(2), *i.e.*, the normal rules of tolling do not apply after three years. Appellant does not seriously contest this ruling and it is consistent with a view of the majority of the courts to consider the question. *See Brown v. Producers Livestock Loan Co.*, 469 F. Supp. 27 (D. Utah 1978); *Turner v. First Wisconsin Mortgage Trust*, 454 F. Supp. 899 (E.D. Wis. 1978); *Cowsar v. Regional Recreations, Inc.*, 65 F.R.D. 394 (M.D. La. 1974). The Tenth Circuit has interpreted the almost identical language in the Interstate Land Sales Full Disclosure Act to constitute an absolute bar. *Aldrich v. McCulloch Properties, Inc.*, 627 F.2d at 1042-43. *But see In re Home-Stake Production Co. Securities Litigation*, 76 F.R.D. 337 (N.D. Okl. 1975). The court in *Turner v. First Wisconsin Mortgage Trust, supra*, rejected the plaintiff's argument that the three-year period could be tolled by the defendant's concealment of the claim. "Otherwise [§ 13] would create a limitation period for all suits of one year from the time discovery of the untrue statements or omissions should have been made, and the three-year provision would serve no purpose at all." 454 F. Supp. at 911. We find this reasoning convincing. We hold that the normal tolling rules are not applicable to toll the three-year period. Accordingly, we hold that appellant's claims under § 11 and § 12(2) are absolutely barred and affirm the district court's dismissal of those claims.

II. DID APPELLANT ALLEGE SUFFICIENT FACTS WHICH WOULD TOLL THE STATUTE OF LIMITATIONS ON THE § 10(b) AND § 17 CLAIMS?

While we relied upon state law for the appropriate statute of limitations, federal law determines "when the clock starts to running" for purposes of the statute of limitations. *See Azalea Meats, Inc. v. Muscat*, 386 F.2d 5, 8 (5th Cir. 1967). "Under federal law, a cause of action under § 10(b) and Rule 10(b)-5 ... accrues when the aggrieved party has either actual knowledge of the violation or notice of facts which, in the exercise of due diligence, would have led to actual knowledge thereof." *See Vigman v. Community National Bank & Trust Co.*, 635 F.2d at 459. Appellant claims that by the exercise of due diligence he did not discover the claims now asserted until 1977, within one year before the complaint was filed, and well within the appropriate statute of limitations whether it be two, three or four years.

We turn to the allegations of the complaint, particularly those of concealment of the facts by the defendants, which would tend to establish that plaintiff exercised due diligence in discovering the claims which he now asserts. The allegations throughout the complaint which would establish appellant's due diligence or concealment of facts by the corporate defendants fall into three categories:[1] (1) that the de-

1. The allegations of concealment are not contained within each and every count of the complaint; however, the allegations are contained at various points in the complaint. We believe it would be contrary to the liberal reading which we must give to a complaint upon motion to dismiss to consider the allegations of concealment only as to those counts in which the allegations are set forth. Having made such allegations with respect to some counts, and there being a reasonable inference that the allegations would likewise apply to the other counts, we surely cannot conclude that it appears beyond doubt that plaintiff can prove no set of facts which would entitle him to relief.

fendants conspired to fail to file required reports with the Securities and Exchange Commission, to fail to file and mail stockholders reports and proxy statements, and to fail to call annual stockholders meetings; (2) that defendants attempted to lull appellant by telling him that reports on L&L's financial condition would be forthcoming and that all was well with L&L; and (3) that defendants conspired to prevent the appellant from learning the true condition of the corporation by denying appellant access to corporate books and records, by falsely advising appellant that records had been lost or were unavailable, and by making false entries in the books and records. Appellant asserts, as a consequence of these actions, he did not reasonably discover the existence of the claims until 1977.

We are mindful of the standard for ruling on a Rule 12(b)(6) motion: "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," *Conley v. Gibson*, 355 U.S. 41, 45-6, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957). In granting the defendants' motion to dismiss the complaint pursuant to Rule 12(b)(6), the district court held, as a matter of law, that the plaintiff was aware of facts which would have disclosed the alleged fraud. The facts relied upon by the district court were only three: first, Summer's knowledge that the defendant corporation did not hold annual stockholders' meetings; second, his knowledge that the defendant corporation did not send out annual stockholders' reports; and third, his knowledge of the sharp decline in the value of the stock.

With respect to the decline in the price of the Land and Leisure stock, we note that the bulk of Summer's purchases occurred after the substantial price decline, and that all the purchases were made through the underwriter, Raymond, James. It is a reasonable inference from the pleadings that the independent accounting firm, Arthur Young, continued to provide accounting services throughout the relevant

time, including in particular after the time of the substantial price decline. If the price decline did not put the accounting firm and the underwriter on notice, it is a reasonable inference that it would not have put Summer on notice. We can conceive of several factual situations in which a price decline, under the circumstances here, would not be indicative of fraud in the least, *e.g.*, a depressed real estate market caused either by tight money or recession.[2]

With respect to the failure to send annual stockholders' reports and hold annual stockholders' meetings, none of the defendants have cited any case, nor have we found one, which holds that the mere failure to send such reports or hold such meetings is sufficient to put an investor on notice of facts which in the exercise of due diligence would have led to actual knowledge of fraud.[3]

2. Defendants cite several cases in which a plaintiff's knowledge of the declining market price of securities has been a factor indicating that plaintiff had knowledge of facts which should have led to the discovering of the fraud. However, these cases apparently involved misrepresentations relating to the value of the securities — *e.g.*, that the investment would produce a stable income with no risk — so that sharp declines in value shortly after such misrepresentation would in fact tend to indicate that the representation was false. *See Buder v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 644 F.2d 690 (8th Cir. 1981); *Koke v. Stifel, Nicolaus & Co.*, 620 F.2d 1340 (8th Cir. 1980); *Jablon v. Dean Witter & Co.*, 614 F.2d 677 (9th Cir. 1980); and *Hupp v. Gray*, 500 F.2d 993 (7th Cir. 1974). In the instant case, a decline in market price is not inconsistent with the representations complained of nor otherwise suggestive of the fraud alleged.

3. Arthur Young's reliance upon *Cook v. Avien, Inc.*, 573 F.2d 685 (1st Cir. 1978), is misplaced. *Cook* did not hold that the failure to hold a stockholders' meeting constituted notice. In *Cook*, a stockholders' meeting was in fact held, and plaintiff would have become aware of the misrepresentations had plaintiff attended. *Id.* at 696, n.22. Nevertheless, the First Circuit declined to adopt an inflexible rule imputing such knowledge to a shareholder who did not attend the meeting; rather, the court held only that the failure to attend was one factor to be weighed adversely to plaintiff's diligence. *Id.* at 695, n.21.

[3] In the present posture of this case[4] — a Rule 12(b)(6) dismissal — the three facts relied upon by the district court are simply not sufficient to justify a conclusion that "it appears beyond doubt that the plaintiff can prove no set of facts" which would adequately explain why plaintiff did not become suspicious. In fact, Summer has made significant allegations tending to explain his lack of suspicion and tending to support his allegation of due diligence. As against all defendants, Summer has alleged generally a conspiracy to fraudulently conceal from plaintiff the material facts. As against the corporate defendants, Summer specifically alleged misrepresentations on numerous occasions that reports of financial condition would be forthcoming, that all was well with the defendant Land and Leisure, and that annual meetings would be forthcoming. In addition, Summer alleged that he was denied access to records, and that there were attempts to prevent him from learning the true financial condition by hiding records, removing records, making false entries in records, and misrepresenting that records were also lost or destroyed. Accordingly, we hold with respect to all defendants, except Arthur Young and Raymond, James that the district court erred in dismissing plaintiff's complaint pursuant to Rule 12(b)(6). In *Azalea Meats, Inc. v. Muscat*, 386 F.2d 5 (5th Cir. 1967), we stated:

> We disagree, however, with its disposition of the issue of due diligence on motions for summary judgment.
>
> Recognizing that "*** the question whether a party had sufficient opportunity, so that in the exercise of reasonable diligence he would have discovered the facts forming the basis of his cause of action, may raise issues of fact which would have to be tried to a jury; ***," the learned judge, on the facts contained in the record before us, treated it as a question of law to be determined by the court and arrived at the ultimate conclusion that:

4. We note that most of the cases relied upon by the defendants were appeals from summary judgments rather than 12(b)(6) dismissals. The plaintiffs were allowed to support their claim with matters outside the pleadings.

"Considering the depositions, documents and affidavits filed herein, there can be no question that plaintiff was put on notice as to the facts constituting its alleged cause of action no later than early September, 1961." We note in passing that neither of the four cases relied upon by the trial court to support this result involved adjudication upon a motion for summary judgment.

The concept of due diligence is not imprisoned within the frame of a rigid standard; it is protean in application. A fraud which is flagrant and widely publicized may require the defrauded party to make immediate inquiry. On the other hand, one artfully concealed or convincingly practiced upon its victim may justify much greater inactivity. The presence of a fiduciary relationship or evidence of fraudulent concealment bears heavily on the issue of due diligence.

386 F.2d at 9 (footnotes omitted). Of course we express no opinion as to whether the record in the instant case on remand will develop such that the due diligence issue can be resolved on summary judgment, or whether a full trial will be necessary. However, we are confident that it was error to conclude that "it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. at 45-46, 78 S.Ct. at 101-02. Accordingly, the dismissal of the complaint was error with respect to all defendants except Arthur Young and Raymond, James.

[4] Because the district court concluded that Summer had knowledge of facts which should have led to his discovery of the fraud, the district court did not address the subsidiary argument of Arthur Young and Raymond, James that the complaint contains only conclusory allegations as against those two defendants. We agree with Arthur Young and Raymond, James that the complaint includes only conclusory allegations of fraudulent concealment as against Arthur Young and Raymond, James. Rule 9(b), Fed.R.Civ.P., requires that the elements of fraud be plead-

ed with particularity. Accordingly, we affirm the judgment of the district court to the extent that it dismissed the complaint with respect to Arthur Young and Raymond, James, but we hold that on remand Summer be granted leave to amend to assert more particularized allegations as against Arthur Young and Raymond, James, if he can do so. See 2A Moore's Federal Practice, ¶9.03 (indicating that dismissal for failure to comply with Rule 9(b) is almost always with leave to amend.)

III. THE OTHER ISSUES ON APPEAL

Our disposition necessarily supplants the district court's determination that the complaint was without merit and that the defendants were entitled to attorney's fees. We therefore vacate the award of attorney's fees, which also makes it unnecessary for us to address the issues on cross-appeal relating to the amount of attorney's fees. Likewise, we reinstate the pendent state claims.

IV. CONCLUSION

We affirm the district court's dismissal of the § 11 and § 12(2) claims as against all defendants. As against all defendants except Arthur Young and Raymond, James, we reverse the district court's dismissal of the § 10(b) Rule 10(b)-5 claims and the § 17 claims and remand for further proceedings not inconsistent with this opinion. As to Arthur Young and Raymond, James we affirm the dismissal of the § 10(b) and Rule 10(b)-5 claims and the § 17 claims, but direct that leave to amend be granted. The district court's award of attorney's fees is vacated. The pendent state claims are reinstated. All costs of this appeal shall be taxed against appellees.

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**
UNIT B
No. 79-2429
80-5297

ROGER L. SUMMER,
Plaintiff-Appellant-
Cross-Appellee,

versus

LAND & LEISURE, INC.,
ET AL.,
Defendants-Appellees-
Cross-Appellants.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION FOR REHEARING

(January 29, 1982)

Before GODBOLD, Chief Judge, FRANK M. JOHNSON and ANDERSON, Circuit Judges. PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby *Denied.*

ENTERED FOR THE COURT:

/s/ UNITED STATES CIRCUIT JUDGE

**Former Fifth Circuit Case; (Section 9(1) of Public Law 96-452-10/14/81)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 78-810-Civ-JAG

ROGER L. SUMMER,
Plaintiff,

v. **ORDER**

LAND & LEISURE, INC.,
et al.,
Defendants.

This cause came before the Court on the various Motions of the defendants to dismiss. This is an action brought pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Florida Blue Sky laws, F.S. 517.21 and F.S. 517.301 and pendant jurisdiction. More specifically, Count 1 of the Complaint is based on § 10b of the 1934 Act and Rule 10(b)-5; Count 2 is based on common law fraud; Count 3 is based on § 11 and § 17 of the 1933 Act; Count 4 is based on § 11 of the 1933 Act; Count 5 is based on § 12(2) of the 1933 Act; Count 6 is based on common law fraud; Count 7 is based on F.S. 517.21 and F.S. 517.301; Count 8 is based on the common law of Florida and Count 9 is also based on the common law of Florida.

The Court has carefully reviewed the 40 page Complaint, defendants' Motions to dismiss and the memoranda filed in support of and in opposition to the Motions to dismiss. The Motions to dismiss filed by the various defendants allege that plaintiff's claims are all barred by the applicable statutes of limitations.

Count 1, as stated, is brought pursuant to § 10(b) of the 1934 Act, and Rule 10(b)-5. Since the 1934 Act does not have its own statute of limitations, the Court must look to the most closely analagous state statute of limitations, which in this case is F.S. 517.21 which provides a two year limitation period. *Nortek, Inc. v. Alexander Grant & Co.*, 532 F.2d 1013,

1015 (5th Cir. 1976). F.S. 517.21 was repealed, effective January 1, 1975, therefore the Court must apply a different statute subsequent to that date. Applying the statute of limitations for fraud, F.S. 95.11(3), the limitation period would be four years.

The Complaint states that plaintiff purchased an aggregate sum of 9,500 shares of common stock of defendant Land & Leisure. The first shares were purchased on June 24, 1971 and the last purchase was made on January 3, 1973. The Complaint was filed February 23, 1978. Applying the two year limitation period to all but the last purchase, plaintiff's claims for purchases from June 24, 1971 through December 27, 1972 are time barred. Applying the four year limitation period to the last sale on January 3, 1973, this claim is also time barred.

In determining when the clock starts to run for the purpose of applying a borrowed state statute of limitations for a federally created remedy, federal law controls. *Azalea Meats, Inc. v. Muscat*, 386 F.2d 5 (5th Cir. 1967). The statute of limitations in a § 10(b) action begins to run from the time a person has actual knowledge or notice of facts which, in the exercise of due diligence, would have led to actual knowledge of the violation. *Aboussie v. Aboussie*, 441 F.2d 150 (5th Cir. 1971.)

The statute of limitations may be tolled by the equitable doctrine of fraudulent concealment. However, in order to invoke the doctrine, a party must have remained ignorant of the fraud without any fault or want of diligence or care on his part. A party may not merely rely on his own awareness of the facts or law to toll the statute, but must show he has exercised reasonable care and diligence in seeking to learn the facts which would have disclosed the fraud. In other words, the statutory period "...[does] not await the appellant's leisurely discovery of the full details of the alleged scheme...". *Klein v. Bower*, 421 F.2d 338, 343 (2d Cir. 1970.)

Normally the concept of due diligence is one involving factual issues not appropriate for summary treatment. *See Azalea Meats, Inc., supra.* However, where it is clear from the face of the Complaint, plaintiff's own allegations, that plaintiff knew facts which should have put him on notice, dismissal is appropriate. *See Klein v. Bower, supra; Berry Petroleum v. Adams & Peck,* 518 F.2d 401, 412 (2d Cir. 1975).

Plaintiff, in his Complaint, alleged that defendants failed to send annual reports or call annual shareholders meetings, as well as failing to supply plaintiff with financial information requested. Defendants argue that these facts were sufficient to place plaintiff on notice and to preclude application of the tolling doctrine. Plaintiff knew in 1971 and 1972 of the defendants failure to send reports or have the shareholders meetings, and was aware of the sharp decline in the value of the stock. Plaintiff contends that this is an issue for trial.

As stated previously, plaintiff's § 10(b) and 10(b)-5 claim is barred by the limitation statutes, unless the statutes are tolled. Inasmuch as it appears from the face of the Complaint that plaintiff was aware of facts which would have disclosed the alleged fraud and therefore due diligence is absent, the Court finds that plaintiff's § 10(6) and 10(b)-5 claims are barred.

Counts 3, 4 and 5 are brought pursuant to § 11, 12(2) and 17 of the 1933 Act. As to § 17 of the Act, the state statute of limitations applies and as discussed with regard to Count 1, the action pursuant to § 17 is also barred by that state statute of limitations. Actions brought pursuant to § 11 and 12(2) are governed by the statute of limitations set forth in § 13 of the 1933 Act which provides that an action must be brought within one year after discovery should have been made by the exercise of due diligence and further provides that nothing under § 11 or 12(1) shall be brought more than 3 years after the security was bona fide offererd to the public or under § 12(2) within 3 years of the sale. As previously stated, the last sale in issue was on January 3, 1973 and

plaintiff at that time was aware of facts which would have lead to discovery of the untrue statements alleged to have been made. Accordingly, the tolling doctrine cannot apply and the actions brought pursuant to § 11 and 12(2) of the 1933 Act are barred by the statute of limitations set forth in § 13 of the Act.

Counts 2, 6, 8 and 9 based on common law fraud are before the Court pursuant to pendent jurisdiction. Inasmuch as the federal claims are barred by the statutes of limitations, these counts based on pendent jurisdiction must also be dismissed. Count 7 based on the Florida Blue Sky laws must be dismissed because the federal claims are barred and pendent jurisdiction does not exist. Furthermore, the claims based on F.S. 517.21 and F.S. 517.301 are also barred by the statute of limitations.

Accordingly, it is

ORDERED and ADJUDGED that defendants' Motions to dismiss are granted and this cause is hereby dismissed as barred by the statutes of limitations and lacking pendent jurisdiction.

DONE and ORDERED at Miami, Florida, on the 2nd day of May, 1979.

/s/ DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 78-810-Civ-JAG

ROGER L. SUMMER,
Plaintiff,

v.

LAND & LEISURE, INC., et al.,
Defendants.

FINAL ORDER

THIS CAUSE having come before the Court on plaintiff's Motion for Rule 54(b) Certification, and the Court having considered the Motion and being otherwise duly advised,

It is thereupon

ORDERED AND ADJUDGED as follows:

1) The Motion for Rule 54(b) Certification be and the same is hereby Denied.

2) Final Judgment in this cause is hereby entered and the case is Dismissed as to all defendants including Robert Little for the reasons set forth in the Court's order dated May 2, 1979.

3) The Court shall retain jurisdiction over the matter in order to make an award of attorneys' fees and costs in accordance with Section 11(e) of the Securities Act of 1933, 15 U.S.C. § 77k(e).

DONE AND ORDERD at Fort Lauderdale, Florida, this 30th day of January, 1980.

/s/ UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 78-810-Civ-CA

ROGER L. SUMMER,

Plaintiff

v.

COMPLAINT

LAND & LEISURE, INC., GUY BAILEY, SR., GUY BAILEY, JR., ROBERT LITTLE, JEROME GROSSMAN, ARECA STONE BAILEY, CHARLOTTE BABCOCK, ARTHUR YOUNG & COMPANY, RAYMOND, JAMES ASSOCIATES, INC. and ROBERT R. FISCHER.

Defendants.

Plaintiff, by and through his undersigned attorneys, sues Defendants, and as grounds therefor alleges:

Jurisdiction and Venue

1. This action arises under Section 5(b)(2) of the Securities Act of 1933, 15 U.S.C. § 77e (the "Act"); § 11 of the Act, 15 U.S.C. § 77k; § 12(2) of the Act, 15 U.S.C. § 77l; § 17 of the Act, 15 U.S.C. § 77q; § 10b of the Securities Exchange Act of 1934, 15 U.S.C. § 78(b) ("Exchange Act"). Securities and Exchange Commission ("SEC"), Rule 10(b)-5, 17 C.F.R. § 240.10(b)-5, and under the statutory and common law of the State of Florida.

2. This Court has jurisdiction of this action pursuant to § 22 of the Act, 15 U.S.C. § 77u, § 27 of the Exchange Act, 15 U.S.C. § 78aa, and pursuant to the provisions of 28 U.S.C. § 1331. This Court has pendent jurisdiction of so much of this action as is based upon State law pursuant to the principles of law enunciated by the United States Supreme Court in

Hurn v. Ousler, 289 U.S. 238, and *United Mine Workers of America v. Gibbs*, 89 Sup. Ct. 1130 (1966).

3. The amount in controversy exclusive of interests and costs exceeds $10,000.

4. In furtherance of the wrongs complained of below Defendants, directly and indirectly, used the means and instrumentality of interstate commerce, including the mails, and telephonic communication devices.

The Parties

5. Plaintiff, ROGER L. SUMMER (hereinafter called "Plaintiff") is over the age of 21 years and resides in and is a citizen of the State of Florida.

6. The Defendant, LAND & LEISURE, INC., (hereinafter "LAND & LEISURE") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in Miami, Dade County, Florida.

7. The Defendants, GUY BAILEY, SR., GUY BAILEY, JR., and ROBERT LITTLE, upon information and belief, are each over the age of 21 years, and are each citizens of the State of Florida, and reside within the jurisdiction of the United States District Court for the Southern District of Florida. At all times material herein these Defendants were officers and/or directors of the Defendant LAND & LEISURE, and functioned in such capacities.

8. Upon information and belief, the Defendant JEROME GROSSMAN is over the age of 21 years, and a citizen of the State of Florida, and resides within the jurisdiction of the United States District Court for the Southern District of Florida.

9. Upon information and belief, the Defendants ARECA STONE BAILEY and CHARLOTTE BABCOCK are each of the age of 21 years, and are citizens of the State of Florida, and reside within the jurisdiction of the United States District Court for the Southern District of Florida. At all times

material herein each of the aforementioned Defendants functioned as an officer and/or a director of the Defendant LAND & LEISURE.

10. The Defendant ARTHUR YOUNG & COMPANY (hereinafter "ARTHUR YOUNG"), is a partnership of independent public accountants which conducts its business and practice in most of the principal cities of the United States. Upon information and belief, at all times relevant hereto, Defendant maintained offices in Miami, Dade County, Florida, and performed accounting and auditing services for the Defendant LAND & LEISURE, and further provided such services, expertise, reports, financial statements, and exhibits to Defendant LAND & LEISURE for use in the preparation and filing of LAND & LEISURE's Registration Statement and amendments thereof, Prospectus for its public offering, and for subsequent period reports to State and Federal regulatory agencies as well as to the management of LAND & LEISURE.

11. The Defendant RAYMOND, JAMES & ASSOCIATES, INC., (hereinafter "RAYMOND, JAMES"), is a corporation organized and existing under the laws of the State of Florida, with its principal place of business in St. Petersburg, Pinellas County, Florida, and at all times relevant hereto was the "lead" or "managing" underwriter of the public offering of the securities of Defendant LAND & LEISURE, beginning on or about June 17, 1971.

12. The Defendant ROBERT R. FISCHER at all times material herein was over the age of 21 years, a citizen and resident of the State of Florida residing in this District, and an officer of Defendant LAND & LEISURE.

13. The securities purchased by the Plaintiff were offered for sale and were sold within this judicial district.

14. Upon information and belief each of the Defendants either: (a) did the things complained of herein; or (b) agreed and conspired to do the things complained of in this Com-

plaint; or (c) aided and abetted each other in doing said things; or (d) at all times material to this action, directly or indirectly controlled and/or was a controlling person of Defendant LAND & LEISURE within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934.

COUNT I

Based upon § 10(b) of the Exchange Act, and SEC Rule 10(b)-5, Plaintiff restates and realleges Paragraphs 1 through 14, inclusive, as if more fully set forth herein.

15. The Plaintiff purchased the aggregate sum of 9,500 shares of the common stock of Defendant LAND & LEISURE for a total aggregate consideration of approximately $54,000, on or about the following dates:

Date	Amount
June 24, 1971	$3,000.00
June 24, 1971	600.00
July 20, 1971	400.00
August 5, 1971	500.00
August 6, 1971	500.00
October 2, 1972	500.00
October 26, 1972	500.00
November 10, 1972	500.00
November 20, 1972	500.00
December 20, 1972	500.00
December 27, 1972	1,000.00
January 3, 1973	1,000.00

16. Commencing on or about June 17, 1971, and at all times material hereto, LAND & LEISURE aided and abetted by Defendants RAYMOND, JAMES sold to Plaintiff the securities set forth in Paragraph 15 above, which sales were accomplished by the use, directly or indirectly, of means and instrumentalities of interstate commerce, including the mails and telephonic communication.

17. The Defendants LITTLE, GROSSMAN, ARTHUR YOUNG, RAYMOND, JAMES and LAND & LEISURE, and each of them, aided and abetted by one or more of the others, employed one or more devices, schemes, and artifices to defraud Plaintiff in substantially the following manner, as is more specifically set forth in Paragraph below:

(a) Made untrue statements of material facts, and omitted to state material facts necessary in order to make the representations made not misleading in order to induce the Plaintiff to purchase the stock of LAND & LEISURE, as aforesaid; and

(b) Engaged in acts, practices and courses of business which operated as a fraud and deceit upon the Plaintiff; and

(c) Aided and abetted as active participants or negligently acquiesced in, suffered to occur or approved the complained of acts by the other Defendants.

18. The untrue statements of material facts and omissions to state facts necessary in order to make the representations not misleading, were accomplished through the use of a Prospectus for LAND & LEISURE ("the Prospectus"). Attached hereto as Exhibit A is a true and correct copy of the Prospectus as filed with the SEC and sent to the Plaintiff through the mails in connection with the public offering of the common stock of LAND & LEISURE and the purchase thereof by Plaintiff.

19. The Prospectus was false and misleading and contained omissions of material fact necessary in order to make the statements made not misleading as follows:

(a) The Prospectus failed to disclose that one L.R. BROOKS was a controlling shareholder of LAND & LEISURE by virtue of his beneficial ownership of approximately 113,000 shares of stock of the corporation, or 38.4% standing in the name of MURRAY

SCHWARTZ, JEROME GROSSMAN and/or ROBERT LITTLE.

(b) The Prospectus failed to disclose that L.R. BROOKS had an indirect controlling interest in LAND & LEISURE by virtue of his ownership of a controlling interest in CORDWELL INTERNATIONAL DEVELOPMENTS, LTD., which company owned beneficially 35.6% of the shares of stock of LAND & LEISURE as of the date of the Prospectus.

(c) The Prospectus failed to disclose that L.R. BROOKS maintained an office on the premises of LAND & LEISURE, and while not designated as an officer, director or managing agent, exercised a controlling influence over the officers and directors of LAND & LEISURE in the day to day operations and management of the company.

(d) The Prospectus omitted to state material facts regarding the company's "WESTVIEW" property necessary in order to make the statements made not misleading, by failing to disclose that the WESTVIEW property comprised of approximately 1000 acres, is under water year round ranging in depth from 2 feet to over 16 feet; that the property lacks access from any road or highway; and that the cost to LAND & LEISURE to drain the property would be approximately $40 million dollars, or five times the value of the property sold at retail to third party purchasers. As a result of the foregoing, property which LAND & LEISURE had purchased for $1,200,000 which received prominent treatment in the Prospectus, was virtually worthless.

(e) The Defendants LITTLE, GROSSMAN, ARTHUR YOUNG, RAYMOND, JAMES and LAND & LEISURE knew or should have known of such false material information contained in this Prospectus at

least as early as June 2, 1971 (and possibly as early as March, 1971) by virtue of correspondence dated June 2, 1971 between L.R. BROOKS and Defendant JEROME GROSSMAN, who on said date was Executive Vice President and a Director of Defendant LAND & LEISURE; correspondence dated June 14, 1971 between L.R. BROOKS and Defendant ROBERT LITTLE, who on said date was President and a Director of Defendant LAND & LEISURE; and by virtue of a Memorandum dated June 23, 1971 between L.R. BROOKS and Defendant ROBERT LITTLE. In addition, upon information and belief, L.R. BROOKS supplied to Defendant LAND & LEISURE at or about the aforementioned dates, a report from GEE & JOHNSON, Surveyors, showing the WESTVIEW land to be worthless.

(f) The Prospectus made further false and misleading statements of material fact by affirmatively stating that all land to be sold to third parties by the Defendant LAND & LEISURE had been registered with the Florida Land Sales Board when in truth and fact 112 units of the 656 units of land to be sold by LAND & LEISURE, or 17% of its inventory, had not been registered with the Florida Land Sales Board. The Prospectus then omitted to state material facts necessary in order to make the statements made therein not misleading when it failed to disclose that the sale by LAND & LEISURE of unregistered land subjected the company to sanctions by the Florida Land Sales Board, including the recision of any and all sales to third parties, which recision would have resulted in the demise of the company.

(g) The Prospectus failed to disclose that LAND & LEISURE's accounting firm, Defendant ARTHUR YOUNG, was owed the sum of $85,000 for past due accounting and auditing fees, some incurred as a result of the public offering, and that as a result

LAND & LEISURE had pledged Accounts Receivable to ARTHUR YOUNG & COMPANY in the amount of $127,500. The Prospectus further failed to disclose that it was the intention of the Defendant LAND & LEISURE to pay out of the proceeds of the public offering to Defendant ARTHUR YOUNG, the sum of $50,000 as a partial payment on past due accounting and auditing fees.

(h) The Prospectus failed to disclose that at the time of the public offering Defendant LAND & LEISURE had determined that it would not follow through with its commitment to build and develop the CHUCK CONNORS WONDERFUL WEST complex, nor honor its contract with CHUCK CONNORS regarding same, since as of June 2, 1971 (and possibly as early as March, 1971), the Defendant LAND & LEISURE and its officers and directors had become aware of the fraud perpetrated on the company in the purchase of the WESTVIEW property and at the time of the public offering the Defendant LAND & LEISURE needed approximately $400,000 in cash in order to rescind the WESTVIEW purchase. The Defendant LAND & LEISURE did not have this cash available to it except from the public offering which began on or about June 17, 1971.

20. In reliance upon the said false and misleading Prospectus, Plaintiff purchased the aforesaid shares of stock of LAND & LEISURE, and as a direct and proximate result of the aforesaid wrongful conduct of the Defendants, and each of them, Plaintiff has been damaged in the amount of $54,000.

WHEREFORE, Plaintiff demands judgment jointly and severally against the Defendants ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG, RAYMOND, JAMES and LAND & LEISURE, in the amount of $54,000,

which is the difference between the actual value of said securities and the amount paid therefor by Plaintiff; and further demands attorneys' fees, interests, and the costs of this action.

COUNT II
Based Upon Common Law Fraud

21. Plaintiff restates and realleges Paragraphs 1 through 20, inclusive, as if more fully set forth herein.

22. By reason of the foregoing wrongful conduct, the Defendants ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG, RAYMOND, JAMES, and LAND & LEISURE, and each of them, engaged in a fraud actionable at common law whereby Plaintiff has been damaged in the amount of $54,000.

WHEREFORE, Plaintiff demands judgment against the Defendants ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG, RAYMOND, JAMES, and LAND & LEISURE, jointly and severally, in the amount of $54,000 plus punitive damages in the amount of $540,000, together with interests, costs, and disbursements permitted by law in this action.

COUNT III
Based Upon Sections 11 and 17
of the Securities Act of 1933

23. Plaintiff restates and realleges Paragraphs 1 through 23, inclusive, as if more fully set forth herein.

24. For the purpose of bringing about a sale of the stock of Defendant LAND & LEISURE of the value of $1,600,000 and the sale of collateralized subordinated sinking fund debentures of the value of $2,000,000, the Defendants, LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG, and RAYMOND, JAMES, prepared or caused to be prepared a Prospectus (attached hereto as Exhibit A) for general distribution among the public and to the

Plaintiff who might be induced thereby to purchase said stock and/or debentures.

25. The Prospectus contained the following false and fraudulent statements as well as omissions of material fact necessary in order to make the statements made therein not misleading, regarding the condition and prospects of Defendant LAND & LEISURE:

(a) The Prospectus failed to disclose that one L.R. BROOKS was a controlling shareholder of Defendant LAND & LEISURE by virtue of his beneficial ownership of 113,000 shares of the common stock or 39.4% of the company standing in the name of MURRAY SCHWARTZ, JEROME GROSSMAN, and/or ROBERT LITTLE.

(b) The Prospectus failed to disclose that L.R. BROOKS had an indirect controlling interest in Defendant LAND & LEISURE by virtue of his ownership of a controlling interest in CORDWELL INTERNATIONAL DEVELOPMENT, LTD., which company owned beneficially 35.6% of the shares of stock of Defendant LAND & LEISURE as of the effective date of the Prospectus.

(c) The Prospectus failed to disclose that L.R. BROOKS maintained an office on the premises of Defendant LAND & LEISURE, and exercised a controlling influence over the officers, directors, and managing agents of Defendant LAND & LEISURE, and in truth and fact was responsible for and did control the day to day operations and management of the company.

(d) The Prospectus affirmatively stated false material facts regarding the condition of the Defendant LAND & LEISURE "WESTVIEW" property when it stated that the property was similar in characteristics to LAND & LEISURE's "WEST-

FIELD" property and the Prospectus omitted to state material facts necessary in order to make the statements made not misleading regarding the WESTVIEW property,by failing to disclose that the WESTVIEW property, comprised of approximately 1000 acres, was under water at all times ranging in depth from 2 feet to over 16 feet; that said property lacked access from any improved road or highway; and finally that it would cost the Defendant LAND & LEISURE approximately $40 million dollars to drain the "WESTVIEW" property, which sum was far in excess of the aggregate projected sales price for the property and as a result, property which had been purchased by LAND & LEISURE for $1,200,000, was in truth and fact utterly worthless.

(e) That the aforesaid Defendants knew or should have known of such facts is apparent by virtue of correspondence dated June 2, 1971, between L.R. BROOKS and Defendant JEROME GROSSMAN, who on such date was Executive Vice President and a Director of Defendant LAND & LEISURE; correspondence dated June 14, 1971, between L.R. BROOKS and Defendant ROBERT LITTLE, who on such date was President and a Director of Defendant LAND & LEISURE, and a Memorandum dated June 23, 1971, from L.R. BROOKS to Defendant ROBERT LITTLE, who was President and a Director on said date.

(f) The Prospectus made false and misleading statements of material fact by affirmatively stating that all land to be sold to third parties by the Defendant LAND & LEISURE had been registered with the Florida Land Sales Board, when, in truth and fact, 112 units of 656 units, or 17% of the land to be sold by Defendant LAND & LEISURE, had not been registered for resale with the Florida Land Sales

Board. The Prospectus omitted material facts necessary in order to make statements made therein not misleading when it further failed to disclose that the resale by Defendant LAND & LEISURE of unregistered land subjected the company to sanctions by the Florida Land Sales Board including by way of example, having to rescind any and all sales to third parties which action would effectively result in the company having to cease doing business.

(g) The Prospectus omitted to state material facts regarding a relationship between Defendant LAND & LEISURE and its accounting firm, Defendant ARTHUR YOUNG, when the Prospectus failed to disclose that as of its effective date Defendant ARTHUR YOUNG was owed the sum of $85,000 for past due accounting and auditing fees, and that as a result, Defendant LAND & LEISURE had pledged Accounts Receivable to ARTHUR YOUNG in the amount of $127,500. In addition the Prospectus further omitted to disclose the material fact that an agreement had been reached between Defendant LAND & LEISURE and Defendant ARTHUR YOUNG prior to the effective date of the public offering that ARTHUR YOUNG would be paid by Defendant LAND & LEISURE from the proceeds of the public offering. On or about September 7, 1971, Defendant ARTHUR YOUNG was in fact paid $50,000 for accounting fees, notwithstanding the foregoing the Prospectus failed to disclose same at Page 6 under the heading "Use of Proceeds."

(h) The Prospectus made material misstatements of fact when it stated in the "Business Section" at Page 17, that it intends to use part of the proceeds of the public offering to initiate development of the "CHUCK CONNORS WONDERFUL WEST" entertainment complex on the company's WESTFIELD property because in truth and fact the De-

fendant LAND & LEISURE through its then officers and directors, had already determined that it would not follow through with its contractual commitment to build and develop the CHUCK CONNORS WONDERFUL WEST complex, nor honor its contract with CHUCK CONNORS. Thus the Prospectus failed to disclose that the company was faced with a substantial likelihood of expensive and time-consuming litigation and, that the proceeds of the public offering to be allocated to the development of this entertainment complex as set forth in the "Use of Proceeds" section of the Prospectus, would be used in other ways.

(i) The Prospectus further failed to disclose the material fact that as of the effective date of the Prospectus, to wit, June 17, 1971, Defendant LAND & LEISURE was in default under the terms of its mortgages encumbering its WESTFIELD, WESTVIEW and WESTMONT properties, and further it entered into an agreement with the mortgagee, WILLIAM MOSER and/or NATIONAL OIL & GAS, INC. (a corporation wholly owned by WILLIAM MOSER), whereby said defaults were to be cured by using the $350,000 which had been stated in the Prospectus as being allocated to the development of the CHUCK CONNORS WONDERFUL WEST complex.

26. On information and belief, at all times herein mentioned and at the time the Prospectus was prepared, its effective date, and date of circulation, the aforementioned Defendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG and RAYMOND, JAMES, well knew that said Prospectus contained false statements and omissions of material fact necessary in order to make statements made therein not misleading as to the condition of Defendant LAND & LEISURE, but they nevertheless consented, aided and abetted, or acquiesced in,

a submission of the Prospectus to prospective purchasers of the stock of Defendant LAND & LEISURE, and accepted purchasers of the stock of Defendant LAND & LEISURE, and accepted the benefits resulting from the sale of the stock and retained and still retain the benefits.

27. At the time of the effective date (June 17, 1971), and circulation of the Prospectus to the public at large and the Plaintiff, the representations contained in the Prospectus as set forth above were false and misleading and contained omissions of material fact necessary in order to make the statements made therein not misleading, and in truth, the condition of Defendant LAND & LEISURE was not as represented in the Prospectus.

28. At the time the false and misleading representations and omissions of material fact necessary in order to make the facts stated therein not misleading, were made, they were know to the Defendants and each of them, to be false and misleading, and were made by the Defendants, and each of them, with the intent to deceive and defraud the general public, purchasers of stock and debentures of Defendant LAND & LEISURE, and in particular, your Plaintiff.

29. On or about June 24, 1971, a copy of the Prospectus was received by the Plaintiff through the United States Mails from the Defendant RAYMOND, JAMES, acting in its capacity as underwriter of the public offering of the Defendant LAND & LEISURE.

30. At the time the Prospectus was received and at the time of the purchase by the Plaintiff of the stock of Defendant LAND & LEISURE, on the dates and in the amounts as aforesaid, at Paragraph 29 above, the Plaintiff was unaware of the falsity of the representations contained therein, was unaware of the omissions of material fact, but he believed the Prospectus to be true and relied upon it in his purchases of the common stock of the Defendant LAND & LEISURE. As a result of the Prospectus, Plaintiff was induced to and did, on or about those dates set forth above at Paragraph 29

purchase some 9,500 shares of common stock of Defendant LAND & LEISURE, for which he paid the aggregate sum of $54,000. From the time the misrepresentations were made in the Prospectus until in or about October 1977, the Defendants LITTLE, ARTHUR YOUNG and RAYMOND, JAMES and each of them, aided and abetted by the other, engaged in a continuing course of conduct to fraudulently conceal the true financial condition of Defendant LAND & LEISURE from Plaintiff, and to prevent the Plaintiff from discovering any information regarding the affairs and status of Defendant LAND & LEISURE. Defendants, and each of them accomplished this concealment by causing the Defendant LAND & LEISURE to fail to file Annual Reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, annual reports to shareholders, proxy statements to shareholders, all as required under the Rules and Regulations of the SEC pursuant to the authority of the Securities Act of 1933 and the Securities Exchange Act of 1934, and further, in clear violation of the laws of the State of Florida as well as the aforementioned Federal Securities laws, failed to call or and hold a shareholders' meeting at any time from 1971 to and including the date of this pleading.

31. In addition these Defendants were aided and abetted in their continuing course of conduct to fraudulently conceal the true financial condition of the Defendant LAND & LEISURE by the present Board of Directors of Defendant LAND & LEISURE, to wit, GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, and CHARLOTTE BABCOCK, each of whom has served as a director and officer of the Defendant LAND & LEISURE from on or about February 16, 1971 to present.

32. In or about May of 1977 under the Florida Statute § 607.01 et seq., to enforce his right to review the books and records of the Defendant LAND & LEISURE, and it was not until October, 1977, after having enforced his right to such information, that Plaintiff was given access to any books and records concerning the affairs of Defendant

LAND & LEISURE, and even after having been given access to the books and records of Defendant LAND & LEISURE, agents of this Defendant, acting in the course and scope of their agency relationship continued this course of conduct as hereinabove referred by hiding records from the Plaintiff, including books of account, Minutes and ledger sheets, removed records and hid same, deliberately and/or negligently caused false entries to be made in those books and records of Defendant LAND & LEISURE, to which the Plaintiff was given access, and by deliberately advising Plaintiff that certain books and records were lost or destroyed, when in truth and fact the same were in the possession, custody and control of either counsel for Defendant LAND & LEISURE or its officers, employees, or agents.

33. Plaintiff hereby tenders the subject shares of stock to the Defendants, and each of them, and demands payment by Defendants to him of the amount paid for the stock, a total of $54,000.

WHEREFORE, Plaintiff demands judgment against Defendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG & COMPANY, and RAYMOND, JAMES & ASSOCIATES, INC., jointly and severally, in the amount of $54,000, which is the difference between the actual value of the securities of the Defendant LAND & LEISURE owned by Plaintiff, and the amount paid therefor by Plaintiff, plus attorney's fees, interest and the costs of this action.

COUNT IV

Based Upon Section 11 of the Securities Act

34. Plaintiff restates and realleges Paragraphs 1 through 14.

35. For the purpose of bringing about a sale of the stock of the Defendant LAND & LEISURE of the value of $1,600,000, the sale of collateralized subordinated sinking fund debentures of the value of $2 million dollars, the De-

fendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG & COMPANY and RAYMOND, JAMES & ASSOCIATES, INC., negligently prepared, or negligently caused to be prepared, or negligently assisted in the preparation of, a Prospectus for general distribution among the public and to the Plaintiff who might thereby be induced to purchase said stock and/or debentures of the Defendant LAND & LEISURE (see Exhibit A).

36. The Defendants, and each of them, were under a duty to Plaintiff to file a true and correct Prospectus containing true statements of material fact, as well as complete statements of all material facts necessary in order to make the statements not misleading, pursuant to the provisions of § 5(b) of the Securities Act and the Rules and Regulations of the SEC promulgated thereunder.

37. The Defendants, and each of them, breached said duty to Plaintiff by negligently filing, or negligently causing to be filed, or negligently assisting in the preparation of a Prospectus which at the time of its circulation to the public and Plaintiff, as well as at the time of its effective date, to wit, June 17, 1971, contained therein representatons as to the condition of Defendant LAND & LEISURE which were false and misleading, and in addition thereto contained omissions of material fact necessary in order to make the statements made therein not misleading, as these Defendants knew or should have known, in the exercise of ordinary care.

38. On or about June 24, 1971, a copy of the Prospectus was received by the Plaintiff through the United States Mails from Defendant RAYMOND, JAMES.

39. At the time the Prospectus was received by the Plaintiff he was ignorant of the falsity of its representations, but believed them to be true and relied upon them. As a result the Plaintiff was induced to purchase and did in fact purchase on or about those dates set forth at Paragraph 15

above, from Defendant RAYMOND, JAMES, in its capacity as underwriter of the Defendant LAND & LEISURE's public offering, some 9,500 shares of common stock of the Defendant LAND & LEISURE, for which he paid the total aggregate sum of $54,000.

40. The Prospectus contained the following misstatements of material fact and omitted to state material facts necessary in order to make the statements made therein not misleading in the following manner:

(a) The Prospectus failed to disclose that one L.R. BROOKS was a controlling shareholder of Defendant LAND & LEISURE by virtue of his beneficial ownership of 113,000 shares of the common stock of Defendant LAND & LEISURE, or 39.4% held in the names of JEROME GROSSMAN, MURRAY SCHWARTZ, and/or ROBERT LITTLE.

(b) The Prospectus failed to disclose that one L.R. BROOKS had an indirect controlling interest in the Defendant LAND & LEISURE by virtue of his ownership of a controlling interest in CORDWELL INTERNATIONAL DEVELOPMENTS, LTD., which company owned beneficially 35.6% of the shares of common stock of Defendant LAND & LEISURE as of the date of the Prospectus.

(c) The Prospectus failed to disclose that L.R. BROOKS maintained an office on the premises of Defendant LAND & LEISURE, exercised a controlling influence over the other officers and directors of the Defendant LAND & LEISURE, and in truth and fact was responsible for the day to day operations and management of the company.

(d) The Prospectus contained affirmative misstatements of fact wherein it stated that the company's "WESTVIEW" property had substantially similar characteristics to the company's "WESTFIELD" property, when same was in fact not the truth. The

Prospectus further omitted to state material facts regarding the Defendant LAND & LEISURE's "WESTVIEW" property necessary in order to make the statements made not misleading by failing to disclose that "WESTVIEW" property was under water all year ranging from 2 feet to over 16 feet; that it lacked access from any public road or highway; and that it would cost Defendant LAND & LEISURE approximately $40,000,000 to drain said property in order to develop same for resale to third party members of the public, said sum being far in excess of the maximum amount for which the Defendant LAND & LEISURE could hope to sell said property, and that in truth and fact such property which had been purchased for $1,200,000 was worthless.

(e) The Prospectus omitted to state material facts regarding its land sales registration by the Florida Land Sales Board, necessary in order to make the statements not misleading, by failing to disclose that 112 of the 656 units of land (17%) alleged registered by the Defendant LAND & LEISURE for sale with the Florida Land Sales Board, were in truth and fact unregistered, could not and should not have been sold to third parties, and subjected the Defendant LAND & LEISURE to such sanctions (by way of example) as a recision of all sales to third parties, which sanction would have the practical effect causing the company to have to cease all operations.

(f) The Prospectus failed to disclose that LAND & LEISURE's accounting firm, Defendant ARTHUR YOUNG, was owed the sum of $85,000 for past due accounting and auditing fees, as of the effective date of the Prospectus, and that as a result Defendant LAND & LEISURE had pledged Accounts Receivable to ARTHUR YOUNG in the amount of $127,500. The Prospectus further failed to state under the Section titled "Use of Proceeds" that on or

about the effective date of the Prospectus, Defendant LAND & LEISURE and Defendant ARTHUR YOUNG had agreed that ARTHUR YOUNG would be paid the sum of $50,000 on its past due accounting and auditing fees from the proceeds of the public offering.

(g) The Prospectus failed to disclose that at the time of the public offering, the Defendant LAND & LEISURE by and through its officers and directors, had already determined that it would not follow through with its commitment to build and develop the "CHUCK CONNORS WONDERFUL WEST" complex nor honor its contract with CHUCK CONNORS for same, and that as a result it was faced with the substantial likelihood of expensive and time-consuming litigation.

(h) On or about the effective date of the Prospectus, to wit, June 17, 1971, Defendant LAND & LEISURE was in default under the terms of its mortgages encumbering its WESTFIELD, WESTVIEW, and WESTMONT properties, and had already entered into an agreement with the mortgagees, WILLIAM MOSER and/or NATIONAL OIL & GAS, INC. (a wholly owned corporation of Mr. MOSER), whereby said defaults were to be cured by Defendant LAND & LEISURE's diverting $350,000 from the CHUCK CONNORS WONDERFUL WEST complex to "pay off" WILLIAM MOSER and/or NATIONAL OIL & GAS, INC.

41. Plaintiff did not discover the falsity of the representations contained in the Prospectus until in or about October, 1977. Plaintiff could not reasonably have discovered the falsity of such representations contained in the Prospectus since the Defendants ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG, RAYMOND, JAMES, and LAND & LEISURE, and each of them, at all times ma-

terial herein had engaged in continuing course of conduct and conspiracy to fraudulently conceal from the Plaintiff those misstatements of material fact and omissions of material fact necessary in order to make the statements made therein not misleading in substantially the following manner:

(a) At a meeting of the Board of Directors of Defendant LAND & LEISURE held on or about October 12, 1971, a discussion was held by the then present Directors concerning the sale by Defendant LAND & LEISURE of 112 unregistered units of land in violation of the laws of the State of Florida. Further, the Directors discussed at said meeting a disclosure of such information could require LAND & LEISURE to make offers of recision to all who purchased such units of land and thereby effectively close Defendant LAND & LEISURE and abort the public offering then proceeding.

(b) Further, at the meeting of October 12, 1971, as aforesaid, it was disclosed that as a result of such sales of unregistered land, the sale of the collateralized subordinated sinking fund debentures had been suspended in August, 1971 by the unilateral act of the Defendant RAYMOND, JAMES.

(c) Notwithstanding the materiality of the foregoing events, no posteffective amendment of the Registration Statement and Prospectus then in effect was filed, nor was any current report on Form 8-K filed with the SEC, nor was any public disclosure of same made by the Defendants to Plaintiff, and the Plaintiff continued to make purchases of stock of Defendant LAND & LEISURE on or after said date, relying upon the Prospectus.

(d) On December 22, 1971, a meeting of the Board of Directors of Defendant LAND & LEISURE was held.

At such meeting it was disclosed that Defendant LAND & LEISURE used for its general operating purposes, $220,000 of funds received from third party purchasers of its land, which funds should have been placed in a special escrow account to conform to Florida Land Sales Board requirements.

(e) It was further disclosed at the said meeting of December 22, 1971, that property represented to third party purchasers of tracts of land in WESTFIELD III as free and clear, was in fact encumbered by two mortgages and as a result thereof, the Defendant LAND & LEISURE was faced with having to rescind all WESTFIELD III sales and refund the purchase monies therefor to third party purchasers, which money Defendant LAND & LEISURE did not have.

(f) It was further disclosed at the said Board of Directors meeting of December 22, 1971, that the Defendant ROBERT LITTLE was on information and belief, using Defendant LAND & LEISURE as a vehicle for moving money into the United States from a Jamaican or Bahamian corporation, or both, ("laundering") for his own benefit, which money should have been taxed, but was not, and as a result, the Defendant LAND & LEISURE faced potential serious tax consequences with the United States Internal Revenue Service. At said meeting the hiring of special tax counsel to determine what liability, if any, was faced by the Defendant LAND & LEISURE as a result of these actions of the Defendant ROBERT LITTLE was discussed, however, no affirmative action was taken by the Board of Directors.

(g) As a result of the foregoing matters, the Board of Directors of the Defendant LAND & LEISURE should properly have publicly disclosed the aforementioned information through the filing of appropriate reports

with the SEC on Form 8-K, and making a public announcement. Notwithstanding the said obligation, no matter was ever filed or disclosed to the public and the Plaintiff continued to make purchases of the stock of the Defendant LAND & LEISURE after the date of said meetings.

(h) On or about February 15, 1972, a meeting of the Board of Directors of Defendant LAND & LEISURE was held. At this meeting the question of public disclosure of the financial difficulties, as well as the other difficulties of Defendant LAND & LEISURE, as set forth hereinabove, were discussed and the aforesaid Defendants failed and refused to take the steps necessary to make public disclosure of the financial and other difficulties of the Defendant LAND & LEISURE, and in truth and fact, took affirmative action to keep such information from becoming public.

(i) On or about February 16, 1972, control of the Defendant LAND & LEISURE was sold to UNITED RESOURCES, INC., a Florida corporation. Control was acquired by the sale of the stock of certain insiders, to wit, Defendant ROBERT LITTLE, one L.R. BROOKS, Defendant JEROME GROSSMAN, and CORDWELL INTERNATIONAL DEVELOPMENTS, LTD. At said meeting UNITED RESOURCES, INC. caused the resignation of Defendant ROBERT LITTLE, and one THOMAS HAMILTON, OSCAR CORDERO, ARTHUR PAPAZIAN, and JACK LASONDER. In the places of the aforementioned Directors of the Defendant LAND & LEISURE, UNITED RESOURCES, INC. caused the election of the following individuals to the Board of Directors of the Defendant LAND & LEISURE, all of whom accepted their office, and served as Directors of the Defendant LAND & LEISURE at all times material herein, to wit, the Defendants GUY

BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, and CHARLOTTE BABCOCK, as well as one STEVEN W. ARKEY. Upon information and belief Mr. ARKEY subsequently resigned his position as a Director of the Defendant LAND & LEISURE on or about February 17, 1972.

(j) Upon information and belief, the new Board of Directors, GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY and CHARLOTTE BABCOCK, knew or should have known, by the exercise of ordinary care, of the misstatements of material fact and of the omissions of material facts necessary in order to make the statements made not misleading as contained in the Prospectus. That these Defendants knew or should have known of said misstatements and omissions is established by their admission at the Board of Directors' meeting of February 16, 1972, that they at all times were aware of the true condition of the Defendant LAND & LEISURE. Further, these Defendants, BAILEY, SR., BAILEY, JR., ARECA STONE BAILEY and CHARLOTTE BABCOCK, knew or should have known that those items as set forth hereinabove should have been disclosed by the filing of a posteffective amendment to the Registration Statement, or the filing of a current report on Form 8-K or through other public announcement. Notwithstanding the foregoing, the Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, and CHARLOTTE BABCOCK, joined in and continued the scheme and conspiracy to prevent disclosure of the true condition of the Defendant LAND & LEISURE to the investing public as well as this Plaintiff, and were aided and abetted in this regard by the Defendants ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG, and RAYMOND, JAMES, in order to protect the investment of UNITED RE-

SOURCES, INC. (of which the Defendants BAILEY, SR., BAILEY, JR., ARECA STONE BAILEY, and CHARLOTTE BABCOCK owned approximately 90% of the issued and outstanding stock) in the Defendant LAND & LEISURE.

(k) In order to accomplish the foregoing, the Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, and CHARLOTTE BABCOCK, from on or about February 16, 1972 to date, conspired with the former officers and directors of the Defendant LAND & LEISURE, to wit, ROBERT FISCHER, ROBERT LITTLE, and JEROME GROSSMAN, as well as with the lead underwriter of the Defendant LAND & LEISURE's public offering, to wit, RAYMOND, JAMES, as well as with a new employee of the Defendant LAND & LEISURE, to wit, ROBERT FISCHER, and the accounting auditing firm of the Defendant LAND & LEISURE, ARTHUR YOUNG, whereby LAND & LEISURE would not prepare nor file documents with the SEC notwithstanding the clear requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder. In addition the Defendants further caused the Defendant LAND & LEISURE to fail to file and mail to shareholders annual reports detailing its financial condition as of a date certain, caused the Defendant LAND & LEISURE to fail to file and mail to shareholders proxy statements as required under Section 14 of the Exchange Act, and further, the Defendants BAILEY, SR., BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK and ROBERT FISCHER, by virtue of their control of the Defendant LAND & LEISURE, caused LAND & LEISURE to fail to call a single annual meeting of shareholders during the period February 16, 1972 to date, notwithstanding the clear requirements for an annual meet-

ing of shareholders under applicable Federal and State Law as well as under the By-Laws of the Defendant LAND & LEISURE.

(l) In addition, the Defendant GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK, and ROBERT FISCHER, in their capacities as directors and/or officers of the Defendant LAND & LEISURE, took affirmative action to prevent your Plaintiff from learning anything at all about the true condition of the Defendant LAND & LEISURE through the means and instrumentalities of interstate commerce, including the mails and telephonic communication, whereby they represented to your Plaintiff on numerous occasions that reports on the financial condition would be forthcoming, that all was well with the Defendant LAND & LEISURE, and that annual meetings of shareholders as well as SEC reports would be forthcoming, when in truth and fact, they, and each of them, knew or should have known in the exercise of ordinary care that such was not the case.

(m) Plaintiff was denied access to the books and records of the Defendant LAND & LEISURE, until suit was instituted in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in a case styled "Roger L. Summer vs. Land & Leisure, Inc. and Robert R. Fischer," Case No. 77-14177. Even after your Plaintiff was allowed access to the books and records, the Defendant ROBERT FISCHER, aided and abetted by others whose names are presently unknown to your Plaintiff, attempted to prevent your Plaintiff from learning the true condition of the Defendant LAND & LEISURE by hiding records from your Plaintiff, by removing records supplied to the Plaintiff and hiding same, by deliberately and/or negligently causing false entries to be made in the books and records of the Defendant LAND &

LEISURE, and by deliberately advising your Plaintiff that certain books and records were lost or destroyed when in truth and fact the same were in the possession, custody and control of the Defendant LAND & LEISURE, or its officers, employees or agents. At the time the false and misleading misrepresentations and omissions of material fact necessary in order to make the facts contained therein not misleading were made, they were known to the Defendants to be false and misleading, and were made by the Defendants with the intent to deceive and defraud the general public, purchasers of stock and debentures of the Defendant LAND & LEISURE in connection with the public offering then proceeding, and in particular, this Plaintiff.

42. On or about June 24, 1971, a copy of the Prospectus was received by the Plaintiff through the United States Mails from the Defendant RAYMOND, JAMES.

43. At the time the Prospectus was received by the Plaintiff and at the time of the purchase by the Plaintiff of the common stock of the Defendant LAND & LEISURE he was unaware of the falsity of the representations contained therein, and he was unaware of the omissions of material fact necessary in order to make the statements made therein not misleading, but he believed the Prospectus to be true and relied upon it in his purchase of the stock of the Defendant LAND & LEISURE. As a result, Plaintiff was induced to, and did on or about those dates set forth above at Paragraph 29, purchase 9,500 shares of the common stock of Defendant LAND & LEISURE for which he paid the aggregate sum of $54,000.

44. Plaintiff hereby tenders the subject shares of stock to the Defendants and demands payment by the Defendants jointly and severally to him of the amount paid for the stock, a total of $54,000.

WHEREFORE, Plaintiff demands judgment against Defendants LAND & LEISURE, ROBERT LITTLE, ROBERT FISCHER, JEROME GROSSMAN, ARTHUR YOUNG & COMPANY, AND RAYMOND, JAMES & ASSOCIATES, INC., in the amount of $54,000, which is the difference between the actual value of the securities of the Defendant LAND & LEISURE and the amount paid therefor by the Plaintiff, plus attorney's fees, interest, and the costs of this action.

COUNT V
Based Upon Section 12(2) of the Securities Act

45. Plaintiff restates and realleges Paragraphs 23 through 33 inclusive, as if more fully set forth herein.

46. By virtue of the happening of the foregoing events, the Registration Statement and Prospectus filed with the SEC contained false and misleading statements of material fact, and failed to state other material facts necessary in order to make the statements contained therein not misleading, all in violation of Section 12(2) of the Securities Act, (15 U.S.C. §77l(2)).

WHEREFORE, Plaintiff demands judgment against Defendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK, ARTHUR YOUNG & COMPANY AND RAYMOND, JAMES & ASSOCIATES, INC., jointly and severally, in the amount of $54,000, which is the difference between the actual value of said securities and the amount paid therefor by Plaintiff, plus attorney's fees, interest, and the costs of this action.

COUNT VI
Based on Common Law Fraud

47. Plaintiff restates and realleges Paragraphs 23 through 33, inclusive, as if more fully set forth herein.

48. By reason of the foregoing wrongful conduct, the Defendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK, ARTHUR YOUNG & COMPANY, and RAYMOND, JAMES & ASSOCIATES, INC., and each of them, engaged in a course of conduct designed to fraudulently conceal the true financial condition of the Defendant LAND & LEISURE from Plaintiff as well as other shareholders, whereby Plaintiff has been damaged in an amount to be determined at trial but not less than $54,000.

WHEREFORE, Plaintiff demands judgments against Defendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK, ARTHUR YOUNG & COMPANY, and RAYMOND, JAMES & ASSOCIATES, INC., jointly and severally, for an amount in excess of $54,000, plus punitive damages in the amount of $540,000, plus interests and the costs of this action.

COUNT VII
Based Upon Sections 517.21 and 517.301 of the Florida Statutes

49. Plaintiff restates and realleges Paragraphs 1 through 20 inclusive, as if more fully set forth herein.

50. The foregoing wrongful conduct of the Defendants constitutes a violation of Florida Statutes, Section 517.301(1)(b) and Plaintiff has elected to rescind said sales to him under the provisions of Section 517.21, Florida Statutes, and herewith tenders to the Defendants the stock of the Defendant LAND & LEISURE heretofore delivered to him, and demands the return of the monies due to him in accordance with said Section 517.21.

51. Plaintiff has been required to retain the services of the undersigned attorneys and to pay them a reasonable attorney's fee.

WHEREFORE, Plaintiff demands judgment against the Defendants LAND & LEISURE, ROBERT LITTLE, JEROME GROSSMAN, ARTHUR YOUNG & COMPANY, and RAYMOND, JAMES & ASSOCIATES, INC., jointly and severally, in the amount of $54,000, the amount paid for the said securities, together with interest, costs, and a reasonable attorney's fee.

COUNT VIII

Based Upon the Common Law of the State of Florida

52. Plaintiff sues Defendants, and as grounds therefor alleges:

53. Plaintiff is a citizen and resident of the State of Florida, and sui juris.

54. Defendants ROBERT LITTLE, and JEROME GROSSMAN are citizens of the State of Florida, and sui juris.

55. At all times material herein, beginning on or about June 24, 1971, Plaintiff was and continues to be the owner and holder of 9,500 shares of the common stock of the Defendant LAND & LEISURE, INC., a Florida corporation.

56. At all times material herein, the Defendants were members of the Board of Directors of LAND & LEISURE, INC., and/or its officers and functioned in such capacity.

57. The acts of omission and commission hereinbelow complained of occurred in this judicial district. As Directors of LAND & LEISURE, INC., the aforesaid Defendants were under a continuing duty of loyalty and a continuing duty of care, including a duty to be attentive to the corporation's business, and further they owed a duty of loyalty to LAND & LEISURE, INC. In addition, these Directors in their capacity as Directors of LAND & LEISURE, INC., had the fundamental responsiblity of representing the interests of the shareholders and in particular, your Plaintiff as one of such shareholders.

58. The Defendants and each of them breached said duties to the Plaintiff in the following fashion:

(a) The Defendants ROBERT LITTLE and JEROME GROSSMAN in or about January, 1970, a more definite time being unknown to Plaintiff, approved the purchase of a tract of land by LAND & LEISURE, INC., located in Osceola County, Florida (hereinafter referred to as "WESTVIEW") for the sum of $1,200,000 from one WILLIAM MOSER and NATIONAL OIL & GAS, INC., an affiliate of MOSER.

(b) The aforementioned Directors approved said purchase of the land without physically viewing the land, without obtaining a survey of the land, without consulting with any land engineer or surveyor, notwithstanding the fact that said property was being purchased by LAND & LEISURE, INC., for resale to third parties, in the ordinary course of business of LAND & LEISURE, INC.

(c) On or about June 2, 1971, a date more definite presently unknown to Plaintiff, and some 15 days before the effective date of LAND & LEISURE, INC.'s Registration Statement for its public offering of its common stock, said Directors knew or in the exercise of due care should have known, that LAND & LEISURE, INC. had been defrauded by WILLIAM MOSER and NATIONAL OIL & GAS, INC. in the purchase of the WESTVIEW land in that said land was not suitable for resale to third parties because of the following facts:

(1) The only possible method of drainage would necessitate spending $30,000 to $40,000 per acre for same, or a sum approximately five times the retail value of such acreage sold to third parties;

(2) There was no access road to said land;

(3) Said land was covered with water twelve months a year ranging in depth from 2 feet to 16 feet; and

(4) Said land could not be resold under the zoning requirements of Osceola County, Florida, until such time as paved roads, underground utilities, sidewalks and sewage treatment plants were installed by LAND & LEISURE, INC.

(d) That the aforesaid Directors knew or should have known of such fraud is apparent by virtue of correspondence dated June 2, 1971 between L.R. BROOKS and Defendant JEROME GROSSMAN, who was a Director and Executive Vice President of LAND & LEISURE on said date; by correspondence dated June 14, 1971 between L.R. BROOKS and Defendant ROBERT LITTLE, who was a Director and President of LAND & LEISURE, INC. on said date; and by virtue of a Memorandum dated June 23, 1971 between L.R. BROOKS and Defendant ROBERT LITTLE.

(e) Notwithstanding the foregoing, these Defendants negligently allowed false and misleading information concerning the said WESTVIEW property to be printed in the Prospectus issued in connection with LAND & LEISURE, INC.'s public offering of June 17, 1971.

(f) The aforementioned Directors further breached their duty of care and their duty of loyalty to Plaintiff by causing LAND & LEISURE, INC. to enter into a recision of the purchase of the WESTVIEW property with WILLIAM MOSER and/or NATIONAL OIL & GAS, INC., an affiliate of MOSER's, wherein LAND & LEISURE, INC. on or about July 7, 1971, bought back from NATIONAL OIL & GAS, INC., 150,000 shares of the stock of CORDWELL INTERNATIONAL DEVELOPMENTS, LTD. for the sum of

$120,000, which stock had been transferred to NATIONAL OIL & GAS, INC. in connection with the purchase of the WESTVIEW property; in addition LAND & LEISURE, INC. paid additional consideration of $330,000 in cash to MOSER and further released MOSER and NATIONAL OIL & GAS, INC. from any and all liability for the fraud. As a result of the foregoing, LAND & LEISURE, INC. was constrained to abandon its plans to develop the CHUCK CONNORS WONDERFUL WEST complex, and thus subject the company to expensive and time-consuming litigation with CHUCK CONNORS, and further, while the aforementioned rescision was consummated on or about July 7, 1971, and was paid with funds from the public offering then ensuing, of LAND & LEISURE, INC., said agreement had been reached with MOSER and/or NATIONAL OIL & GAS, INC. prior to the effective date of the Prospectus, to wit, on or about June 17, 1971, and as a result these Directors allowed a false and fraudulent statement under the "Use of Proceeds" section of the Prospectus to be filed with the Commission and to be distributed to the public. Further, these Directors allowed the defrauding parties, to wit, WILLIAM MOSER and/or NATIONAL OIL & GAS, INC., to be released from any liability to LAND & LEISURE, INC., for the fraud, and thus gave away a potentially valuable right of the company.

(g) These Directors also, during the period June 17, 1971, to and including February 15, 1971, failed to take any action or file any reports on Form 8-K or Form 10-Q as required by the rules and regulations of the SEC pursuant to the Securities Act and the Exchange Act, and thus subjected LAND & LEISURE to the appropriate remedial sanctions by the SEC, including the suspension of trading of its stock.

(h) At or about October 1971 to and including February 16, 1972, THOMAS HAMILTON, EDWARD KOBE, OZZIE MANN, ARTHUR PAPAZIAN, and JACK LASONDER, were appointed to the Board of Directors of LAND & LEISURE, INC., and accepted such appointments and at all times material herein acted in the course and scope of their relationship as a Director of LAND & LEISURE, INC. During approximately February of 1972 the Defendants ROBERT LITTLE, JEROME GROSSMAN, and one OSCAR CORDERO, THOMAS HAMILTON, EDWARD KOBE, OZZIE MANN, ARTHUR PAPAZIAN and JACK LASONDER were either grossly negligent or engaged in a course of fraudulent mismanagement whereby these Defendants in their capacity as Directors of LAND & LEISURE, INC. failed to take advantage of a corporate opportunity wherein LAND & LEISURE, INC. would obtain necessary long-term financing when, at a Board of Directors' meeting on or about February 15, 1972, said Directors turned down a proposal for a line of credit to LAND & LEISURE, INC. of $2.5 million dollars at reasonable terms, and an additional equity investment by the party providing the line of credit of $750,000. Instead, these Defendants through self-dealing and blatant disregard for Plaintiff's rights as a stockholder, allowed UNITED RESOURCES, INC. to acquire approximately 46%, or 245,125 shares of the issued and outstanding common stock of LAND & LEISURE, INC.

(i) The Defendants JEROME GROSSMAN and ROBERT LITTLE at some time between October 1971 and February 14, 1972, a date more specific presently unknown to Plaintiff, entered into an agreement with UNITED RESOURCES, INC. along with one L.R. BROOKS and CORDWELL INTERNATIONAL DEVELOPMENT, LTD., whereby UNITED RE-

SOURCES, INC. would buy, and LITTLE, GROSSMAN, BROOKS, and CORDWELL INTERNATIONAL DEVELOPMENT, LTD., would sell, all of the common stock of LAND & LEISURE, INC. held by LITTLE, GROSSMAN, BROOKS and CORDWELL INTERNATIONAL DEVELOPMENT, LTD. The Defendants LITTLE and GROSSMAN were thus able to obtain as a part of the sale of their stock to UNITED RESOURCES, INC. a price in excess of the price at which the shares of LAND & LEISURE, INC. were selling on the open market. Further, these Defendants with the acquiescence of the Board of Directors as aforesaid, in effect permitted a de facto "going private" disposal of LAND & LEISURE, INC. since by virtue of their ownership of 46% of the issued and outstanding stock of LAND & LEISURE, INC., UNITED RESOURCES, INC. could control and did in truth and fact control, all facets of the management and operations of LAND & LEISURE, INC. to the detriment of the other shareholders and your Plaintiff.

(j) The Defendants LITTLE and GROSSMAN, as well as CORDERO, HAMILTON, KOBE, MANN, PAPAZIAN, FERRIER and LASONDER, failed to investigate or even inquire as to the intentions of UNITED RESOURCES, INC. in acquiring control of LAND & LEISURE, INC., since, upon information and belief, approximately thirty days prior to February 15, 1972, Defendants LITTLE and GROSSMAN, as well as BROOKS and CORDWELL INTERNATIONAL DEVELOPMENTS, LTD., had already entered into a secret undisclosed agreement with UNITED RESOURCES, INC. wherein they would sell control of LAND & LEISURE, INC. to UNITED RESOURCES, INC. In addition, upon information and belief, L.R. BROOKS, as well as Defendants JEROME GROSSMAN and

ROBERT LITTLE owned an undisclosed equity position in UNITED RESOURCES, INC., at or about the same time the foregoing events took place.

(k) On or about February 16, 1972, UNITED RESOURCES, INC. did acquire control of LAND & LEISURE, INC., although, upon information and belief, at said date UNITED RESOURCES, INC. did not own any common stock of LAND & LEISURE, INC., but had only an alleged oral agreement to purchase same from the aforementioned Defendants GROSSMAN and LITTLE, and BROOKS and CORDWELL INTERNATIONAL DEVELOPMENTS, LTD. Notwithstanding the foregoing the Board of Directors of LAND & LEISURE, INC., to wit, HAMILTON, CORDERO, PAPAZIAN, LASONDER, and Defendant LITTLE resigned their position as Directors of LAND & LEISURE, INC., and UNITED RESOURCES, INC. did cause to be elected in their place, Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK, as well as one STEPHEN W. ARKEY.

59. As a direct and proximate result of the gross negligence and/or fraudulent mismanagement of the Defendants LITTLE and GROSSMAN, as well as CORDERO, HAMILTON, KOBE, MANN, PAPAZIAN, FERRIER and LASONDER, Plaintiff has sustained the loss of his investment in LAND & LEISURE, INC., to wit, the sum of $54,000, being the amount he paid for the stock of LAND & LEISURE, INC.

WHEREFORE, Plaintiff demands judgment against Defendants ROBERT LITTLE and JEROME GROSSMAN, jointly and severally, in the amount of $54,000, plus punitive damages in the amount of $540,000, plus interest, plus the costs of this action.

COUNT IX

Based Upon the Common Law of the State of Florida

Plaintiff sues Defendants and as grounds therefore, alleges:

60. Plaintiff is a resident of Dade County, Florida, over the age of 21 years, and sui juris.

61. Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, and CHARLOTTE BABCOCK are all residents of Dade County, Florida, over the age of 21 years, and sui juris.

62. Defendant ROBERT FISCHER is over the age of 21 years, a resident of Dade County, Florida, and sui juris.

63. This is an action for damages in excess of $10,000 exclusive of interest and costs.

64. The acts of omission and commission hereinbelow complained of, occurred within this judicial district.

65. On or about February 16, 1972, Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY and CHARLOTTE BABCOCK, were elected to the Board of Directors of LAND & LEISURE, INC., and at all times material hereto, were acting in the course and scope of their position as Directors of LAND & LEISURE, INC.

66. At all times material herein Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY and CHARLOTTE BABCOCK, by assuming their office committed their allegiance to LAND & LEISURE and acknowledged that the best interests of the corporation and its shareholders must prevail over any individual interest of their own. These Directors at all times as Directors had a duty of loyalty to the corporation and its shareholders and a duty of care, including a duty to be attentive to the corporation's business.

67. Beginning on or about June 21, 1971 to and including January 3, 1972, the Plaintiff purchased in the aggre-

gate 9,500 shares of the common stock of LAND & LEISURE, INC. Plaintiff is still the owner and holder of said 9,500 shares of common stock of LAND & LEISURE, INC., and was a stockholder at all times material herein.

68. The Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY and CHARLOTTE BABCOCK breached their duty of loyalty and their duty of care to the shareholders and to your Plaintiff in substantially the following manner:

(a) These Defendants by virtue of their being controlling shareholders of UNITED RESOURCES, INC., were at all times material herein, aware of the serious financial condition and problems of LAND & LEISURE, INC. These Defendants were well aware at all times that as a result of the problems being faced by LAND & LEISURE, INC., its viability as an ongoing entity was seriously in question. Notwithstanding this knowledge, these Defendants took affirmative action to prevent any disclosure as to the problems of LAND & LEISURE, INC. by virtue of filing reports on SEC Forms 8-K, 10-Q or 10-K. These Defendants took such action for the reason that such disclosure as they well knew would cause a tremendous decrease in the trading value of the stock of LAND & LEISURE, INC. and thus a tremendous loss on its investment by UNITED RESOURCES, INC.

(b) These Defendants further failed to participate actively in the direction of LAND & LEISURE, INC.'s corporate activities by failing to attend meetings of the Board of Directors of the company and indeed to even call such meetings, by failing to review documentation and information as to the affairs of LAND & LEISURE, INC. These Defendants failed to supervise the hiring and firing of personnel, including executive management personnel, but rather acquiesced in the execution of employment agreements be-

tween LAND & LEISURE, INC. and JACK LASONDER and ARTHUR PAPAZIAN, which agreement provided for salaries and other compensation to be paid to these two individuals totally out of line with their management responsibility at a time when LAND & LEISURE, INC. was in an insolvent position, and was in truth and fact a payoff to LASONDER and PAPAZIAN for their assistance in effectuating transfer of control of LAND & LEISURE to UNITED RESOURCES, INC.

(c) These Directors were negligent in the hiring and firing of the executive management of LAND & LEISURE, INC., when, in and about May, 1973, a more specific date being unknown, they hired Defendant ROBERT FISCHER, who had no prior experience of any worth to LAND & LEISURE, INC. These Defendants further authorized the payment of unwarranted compensation to ROBERT FISCHER when in addition to a regular salary they allowed Defendant FISCHER to engage in outside consulting jobs, to take trips at company expense to Europe, Mexico, Puerto Rico, and Freeport, Bahamas, which trips did not have a true business purpose, and ultimately allowed Defendant FISCHER to completely ignore his responsibilities to LAND & LEISURE, INC. to the extent that LAND & LEISURE, INC. failed to keep proper records, books of account, stockholders' lists, ledgers, etc.

(d) These Directors were further negligent in that Defendant FISCHER, on his being hired, and later being made chief operating officer of the company, failed to insure that LAND & LEISURE, INC.'s principal disclosure documents, such as prospectuses, proxy statements, and annual reports to shareholders were complete and accurate, when in truth and fact, at all times material herein, to wit, February 16, 1972 to and including the date of this

Complaint, only one Form 10-K was ever filed with the SEC, notwithstanding the fact that such form is required at least annually, and no quarterly reports on Form 10-Q were ever filed with the SEC, notwithstanding the clear requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder.

(e) These Defendants were further negligent and/or engaged in fraudulent misconduct when they failed to call an annual meeting of shareholders at any time during the period February 16, 1972 to the date of this Complaint, notwithstanding the clear requirement of same under the By-Laws of LAND & LEISURE, INC., under the applicable Florida Statutes (F.S. § 607.01 et. seq.), and the requirements of the Federal Securities laws.

(f) These Directors were also guilty of gross negligence and/or fraudulent mismanagement when they failed to disclose to the shareholders of the company the fact that a large portion of Accounts Receivable was purchased by foreign nationals which contracts for sale, as executed by such foreign nationals, were in violation of the laws of those Nations, principally Norway, such that approximately $1 million dollars of the assets of LAND & LEISURE, INC., as represented by its Accounts Receivable, were potentially uncollectible by virtue of such contracts between a Norwegian national and LAND & LEISURE, INC., being in violation of Norwegian law.

(g) These Defendants were negligent and/or guilty of gross mismanagement when on or about August 27, 1975, they caused to be filed with the Commission a Form 10-K for the fiscal year end June 30, 1974. The Managing Vice President, to wit, Defendant ROBERT FISCHER, executed such 10-K on behalf of the company, which 10-K contained therein at Item 15, a false statement to the effect that LAND & LEI-

SURE, INC., owed to its general counsel the sum of $64,000 in legal fees, when in truth and fact as these Defendants well knew, at no time were any invoices ever submitted to LAND & LEISURE, INC. by the company's general counsel, nor were there ever any services rendered to LAND & LEISURE, INC. such that a fee of such size would have been earned, and upon information and belief, said figure was arrived at solely by virtue of the position of Defendant GUY BAILEY, JR., as a Director of LAND & LEISURE, INC., while at the same time being general counsel for LAND & LEISURE, INC.

69. As a direct and proximate result of the foregoing acts of commission and omission, Plaintiff's investment in the stock of LAND & LEISURE, INC. has become worthless, and he has been damaged in the approximate amount of $54,000.

WHEREFORE, Plaintiff demands judgment against Defendants GUY BAILEY, SR., GUY BAILEY, JR., ARECA STONE BAILEY, CHARLOTTE BABCOCK, and ROBERT FISCHER, jointly and severally, in the amount of $54,000, plus punitive damages in the amount of $540,000, plus interest, and the costs of this action.

/s/ Roger Summer

DIXON, DIXON, LANE,
MITCHELL & HARRIS
Attorneys for Plaintiff
700 Brickell Avenue,
Suite 900
Miami, Florida 33131
Telephone: 358-1405

By _____

STATE OF FLORIDA)
ss
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared ROGER SUMMER, to me known to be the person described in and who executed the foregoing Complaint, and he acknowledged before me that he executed the same.

WITNESS my hand and official seal at Miami, Dade County, Florida, this 14th day of February, 1978.

/s/ Dorothy Clewis

Notary Public, State of Florida, at Large

APPENDIX B

Statutes And Rules Involved

Securities Act of 1933

Section 11(a) of the Securities Act, 15 U.S.C. § 77k(a), provides in relevant part:

> In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue —
>
> (1) every person who signed the registration statement;
>
> (2) every person who was a director of (or persons performing similar functions) or partner in the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;
>
> (3) every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;
>
> (4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;
>
> (5) every underwriter with respect to such security.

Section 11(e) of the Securities Act, 15 U.S.C. § 77k(e), provides in relevant part:

> In any suit under this or any other section of this title the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

Section 12 of the Securities Act, 15 U.S.C. § 77l, provides:

> Any person who —
>
> * * *
>
> (2) offers or sells a security (whether or not exempted by the provisions of section [3], other than that paragraph (2) of subsection (a) thereof), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with in-

terest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

###

Section 13 of the Securities Act, 15 U.S.C. § 77m, provides:

> No action shall be maintained to enforce any liability created under section [11] or section [12](2) unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section [12](1), unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section [11] or section [12](1) more than three years after the security was bona fide offered to the public, or under section [12](2) more than three years after the sale.

###

Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), provides in relevant part:

> It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly —
>
> (1) to employ any device, scheme, or artifice to defraud, or
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

Securities Exchange Act of 1934

Section 10 of the Securities Exchange Act, 15 U.S.C. § 78j, provides in relevant part:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange —
>
> * * *
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5, 17 C.F.R. § 240,10b-5, provides:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or,
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

FLORIDA STATUTES, 1971
Chapter 517, Sale of Securities

517.021 Definitions. — When used in this chapter, unless the context otherwise indicates, the following terms shall have the following respective meanings:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with an applicant or registrant.

(2) "Agent" means salesman as herein defined.

(3) "Associated person" means any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions or any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial.

(4) "Broker" means dealer as herein defined.

(5) "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(6) "Dealer" means any person, other than a salesman registered under this chapter, who engages, either for all or part of his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person. The term "dealer" shall also include any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by said issuer. The term "dealer" shall not include any licensed practicing attorney

who renders or performs any of said services in connection with the regular practice of his profession; any bank authorized to do business in this state; any trust company having trust powers which it is authorized to exercise in this state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any wholesaler selling exclusively to dealers; any person buying and selling exclusively through a registered dealer or stock exchange; or, pursuant to § 517.061(12), any person associated with an issuer of securities if such person is a bona fide employee of the issuer who has not participated in the distribution or sale of any securities within the preceding 12 months and who primarily performs, or is intended to perform at the end of the distribution, substantial duties for, or on behalf of, the issuer other than in connection with transactions in securities.

(7) "Department" means the Department of Banking and Finance.

(8) "Investment adviser" means any person who for compensation engages for all or part of his time, directly, indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of his business as a dealer and who receives no special compensation for such services. The term "investment adviser" shall not include any licensed practicing attorney or certified public accountant who renders or performs any of said services in connection with the regular practice of his profession; any bank authorized to do business in this state; any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state; any trust company having trust powers which it is authorized to exercise in the state, which renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers; any person who renders investment advice exclusively to in-

surance or investment companies; or any person who does not hold himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months.

(9) "Issuer" means any person who proposes to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer.

(10) "Offer to sell," "offer for sale," or "offer" means any attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(11) "Person" means a natural person, a corporation created under the laws of this or any other state, country, sovereignty, or political subdivision thereof, a partnership, an association, a joint-stock company, a trust, or an unincorporated organization.

(12) "Principal" means an executive officer of a corporation, partner of a partnership, sole proprietor of a sole proprietorship, trustee of a trust, or any other person with similar supervisory functions with respect to any organization, whether incorporated or unincorporated.

(13) "Sale" or "sell" means any contract of sale or disposition of a security or interest in a security, for value. The term defined in this subsection shall not include preliminary negotiations or agreements between an issuer or any person on whose behalf an offering is to be made and any underwriter or among underwriters who are or are to be in privity of contract with an issuer. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert

such security into another security of the same issuer or of another person or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security.

(14) "Salesman" means any natural person, other than a dealer, employed, appointed, or authorized by a dealer or issuer to sell securities in any manner or act as an investment adviser as defined in this section. The partners of a partnership and the executive officers of a corporation or other association registered as a dealer shall not be salesmen within the meaning of this definition.

(15) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, whiskey warehouse receipt or other commodity warehouse receipt, or right to subscribe to any of the foregoing; certificate of interest in a profit-sharing agreement or the right to participate therein; certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease, or the right to participate therein; collateral trust certificate, reorganization certificate, preorganization subscription, or any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings; interests in or under a profit-sharing or participation agreement or scheme, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate, or receipt for a security or for subscription to a security.

(16) "Securities option" means any contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.

(17) "Underwriter" means any person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; provided that a person shall be presumed not to be an underwriter with respect to any securities which he has owned beneficially for at least 1 year; and provided, further, that a dealer shall not be considered an underwriter with respect to any securities which do not represent part of an unsold allotment to or subscription by the dealer as a participant in the distribution of such securities by the issuer or an affiliate of the issuer; provided, further, that in the case of securities acquired on the conversion of another security without payment of additional consideration, the length of time such securities have been beneficially owned by a person shall include the period during which the convertible security was beneficially owned and the period during which the security acquired on conversion has been beneficially owned.

517.301 Fraudulent transactions; falsification or concealment of facts. — It is unlawful, and a violation of the provisions of this part, for any person:

(1) In connection with the offer, sale, or purchase of any security, including any security exempted under the provisions of § 517.051 and including any security sold in any transaction exempted under the provisions of § 517.061, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) To publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, communication, or broadcast which though not purporting to offer a security for sale, describes such security for a consideration received or to be received directly or indirectly from an issuer, underwriter, or dealer, or from an agent or employee of an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(3) In any matter within the jurisdiction of the department, to knowingly and willfully falsify, conceal, or cover up, by any trick, scheme, or device, a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry.